

A

## Direct Testimony of Robert J. Kirchberger

## AT&amp;T Proposed Language Revisions

## Add to section 1:

“ISP-bound Traffic” shall have the same meaning, when used in this Agreement, as is used in the FCC’s Order on Remand and Report and Order in CC Docket Nos. 96-98 & 99-68, FCC 01-131, released April 27, 2001 (ISP Remand Order).

## Add to section 5:

1. This section is intended to implement the ISP Remand Order for any period in which the ISP Remand Order is effective during the Term of this Agreement. The Parties agree to compensate each other for delivering ISP-bound traffic and section 251(b)(5) traffic in accordance with the terms and conditions of this section and section 5.7. For purposes of this section, ISP-bound traffic and section 251(b)(5) Local Traffic shall be identified in accordance with the provisions of section 2 below.

## 2. Compensation for ISP-bound Traffic

2.1. All Local Traffic that is terminated by one Party for the other Party pursuant to this Agreement within any calendar quarter in excess of an amount (measured by total minutes of use) that is three times the traffic that is terminated by the other Party pursuant to this Agreement shall be conclusively defined as ISP-bound Traffic. All other Local Traffic that is exchanged between the Parties shall be conclusively defined as any call that would be considered a local call (“Voice Traffic”).

2.2. All Voice Traffic and all ISP-bound Traffic that is exchanged pursuant to this Agreement shall be compensated as follows:

2.2.1. All Voice Traffic that is exchanged pursuant to this Agreement shall be compensated pursuant to Exhibit A.

2.2.2. All ISP-bound Traffic that is exchanged pursuant to this Agreement shall be compensated as follows:

- (a) Commencing on the effective date of this Agreement and continuing until December 13, 2001, \$.0015 per minute of use.
- (b) Commencing on December 14, 2001 and continuing until June 13, 2003, \$.0010 per minute of use.
- (c) Commencing on June 14, 2003, \$.0007 per minute of use. To the extent that the FCC has not taken further action with respect to inter-carrier

compensation for ISP-bound Traffic by June 14, 2004 and this Agreement remains in effect after June 14, 2004, the Parties agree that the rate of \$.0007 per minute of use for ISP-bound Traffic shall remain applicable for such period.

- (d) No charges shall apply to the carriage (including transport and termination) of Voice Traffic and ISP-bound Traffic by either Party for the other Party except as set forth above.

2.2.3. The rates described in Section 2.2.2. above shall apply only if: (a) Verizon requests that ISP-bound Traffic be treated at the rates specified in the ISP Remand Order; (b) Verizon offers to exchange all traffic subject to the reciprocal compensation provisions of section 251(b)(5) with LECs, CLECs, and CMRS providers at these rates; and (c) Verizon has paid all past due amounts owed to AT&T for the delivery of ISP-bound Traffic prior to June 14, 2001. If Verizon does not comply with these conditions, then the rate for the delivery of ISP-bound Traffic shall be the rate for the delivery of Voice Traffic.

2.3. The ability of either Party to receive compensation for ISP-bound Traffic shall be limited as follows based on "growth caps" on compensation for ISP-bound Traffic consistent with the ISP Remand Order. The Parties shall first determine the total number of minutes of use of ISP-bound Traffic (as defined in Section 2.1 above) terminated by one Party for the other Party for the three-month period commencing January 1, 2001 and ending March 31, 2001. The Parties shall then multiply this number of minutes by 4.4, and the resulting product shall be the terminating Party's "2001 ISP-bound Annualized Traffic Cap." The total number of minutes of use of ISP-bound Traffic for which one Party may receive compensation from the other Party during the period July 1, 2001 through December 31, 2001 shall equal 50% of that Party's 2001 ISP-bound Annualized Traffic Cap. The total number of minutes of use of ISP-bound Traffic for which one Party may receive compensation from the other Party during the period January 1, 2002 through December 31, 2002 or for any calendar year thereafter shall equal 1.1 times that Party's 2001 ISP-bound Annualized Traffic Cap. Neither Party may refuse to pay compensation for ISP-bound Traffic to the other Party based on the application of the foregoing "growth caps" until the aggregate amount of ISP-bound Traffic billed by the other Party for a specific calendar year exceeds the applicable maximum number of minutes of use of ISP-bound Traffic that may be compensated pursuant to this Section 2.3 for the entire year (beginning in calendar year 2002) or applicable portion thereof (for calendar year 2001).

2.4. The Party's shall bill each other for Voice Traffic and ISP-bound Traffic each month on the following basis:

2.4.1. For the period commencing on the effective date of this Agreement and continuing through September 30, 2001, each Party shall bill the other Party for Voice Traffic and ISP-bound Traffic based on the relative percentage of minutes of use of total combined Voice Traffic and ISP-bound Traffic represented by each type of traffic during the two-month period ending on May 31, 2001. For example, if Verizon terminated 100 minutes for AT&T during the two-month period ending on May 31 and AT&T terminated 500 minutes for Verizon during that period, the proportion of traffic terminated by AT&T would be 60% Voice Traffic  $[(3 \times 100) / 500]$  and 40% ISP-bound Traffic  $[(500 - (3 \times 100)) / 500]$ , and for the period through September 30, 2001, AT&T would bill 60% of its total minutes of use billed for each month (or portion thereof) at the rate applicable to Voice Traffic and 40% of its total minutes of use at the rate applicable to ISP-bound Traffic.

2.4.2. For each calendar quarter commencing with the fourth quarter of 2001, each Party shall bill the other Party for Voice Traffic and ISP-bound Traffic based on the relative percentage of minutes of use of total combined Voice Traffic and ISP-bound Traffic represented by each type of traffic during the first two months of the immediately preceding calendar quarter. For example, if Verizon terminated 100 minutes for AT&T during the period July 1, 2001 through August 31, 2001, and AT&T terminated 500 minutes for Verizon during that period, the proportion of traffic terminated by AT&T would be 60% Voice Traffic  $[(3 \times 100) / 500]$  and 40% ISP-bound Traffic  $[(500 - (3 \times 100)) / 500]$ , and for the period October 1, 2001 through December 31, 2001, AT&T would bill 60% of its total minutes of use billed for each month (or portion thereof) at the rate applicable to Voice Traffic and 40% of its total minutes of use at the rate applicable to ISP-bound Traffic.

2.4.3. Verizon will calculate the factors to be used for the relative percentage of minutes of use of total combined Voice Traffic and ISP-bound Traffic represented by each type of traffic during periods referred to in Sections 2.4.1 and 2.4.2 above, and Verizon will notify AT&T of such factors in writing by no later than the first day of the period during which such factors will be used. Such factors will govern all billing during the applicable period, and the Parties will not true up any billing for prior periods based on actual balance of traffic during such period. However, AT&T may audit Verizon's factors as provided in Section 2.5 below, and the Parties will true up billing for any period to the extent the factors applicable to such period were incorrectly calculated.

2.4.4. If a Party is terminating both Voice Traffic and ISP-bound Traffic for the other Party, that Party may bill all such traffic at a blended rate based on the weighted average of the rates applicable to Voice Traffic and the rates applicable to ISP-bound Traffic, using the factors specified in Section 2.4.3 above. In the event that AT&T is delivering both Voice Traffic and ISP-bound Traffic to Verizon, and Verizon does not provide factors to AT&T, including minute counts used to determine what portion of AT&T's traffic constitutes "Voice Traffic" and what traffic constitutes "ISP-bound Traffic," by the first day of the period during

which such factors will be used, AT&T shall bill Verizon for all traffic during such period at the rate applicable to Voice Traffic.

2.4.5. AT&T shall have the right to audit factors provided by Verizon pursuant to Section 2.4.3 above and Verizon bills relating to settlements pursuant to this Section, as specified in Section 28.10 (Audits), including the right to audit the number of minutes of use terminated by Verizon for AT&T during any period to the extent such information may affect the volume of traffic that is considered to be Voice Traffic or ISP-bound Traffic under this Agreement. Each Party shall bear its own expenses associated with such audits (provided, however, that AT&T may seek reimbursement from Verizon in the event that an audit finds that an adjustment should be made in the charges that AT&T is entitled to collect from Verizon for reciprocal compensation by an amount that is greater than two percent (2%) of the aggregate charges for reciprocal compensation that had been billed in the audited period).

2.5. The Parties have entered into this Agreement providing for differential compensation of Voice Traffic and ISP-bound Traffic based on the ISP Remand Order, which is on appeal to the United States Circuit Court of Appeals for the District of Columbia Circuit. Without waiving any of their rights to assert and pursue their positions on issues related to compensation for Voice Traffic and ISP-bound Traffic, each Party agrees that until the ISP Remand Order is stayed or reversed or modified on appeal, the Parties shall exchange and compensate each other for Voice Traffic and ISP-bound Traffic on the terms and conditions provided herein. At such time as the ISP Remand Order is stayed, reversed or modified, then (1) ISP-bound traffic shall be deemed Local Traffic retroactive to the effective date of this Agreement; (2) any compensation that would have been due under this Agreement since its effective date for the exchange of ISP-bound traffic shall immediately be due and payable; and (3) the Parties shall immediately begin the exchange of ISP-bound traffic that was subject to the ISP Remand Order on the same terms, conditions, and rates as they exchange section 251(b)(5) traffic.

**B**

## **ATTACHMENT 1**

11.4.1.5.1      Until modified by Commission Order, Verizon may impose limitations to the availability of unbundled local switching at TELRIC prices as provided in paragraphs 11.4.1.5.2 through 11.4.1.5.11 of this Agreement. In the event that the federal Communications Commission modifies its rules governing Verizon's obligation to provide unbundled local switching at TELRIC rates subsequent to the approval of this agreement, paragraphs 11.4.1.5.2 through 11.4.1.5.11 shall be null and void and the pricing of unbundled local switching previously subject to the limitations shall revert to the TELRIC rates applicable to unbundled local switching not subject to the limitations, 30 days following effectiveness of the relevant FCC Order, unless, before that date, the parties agree to implement alternative language or submit the issue to binding arbitration.

**C**



## **ATTACHMENT 2**

### **Exception to Verizon's Obligation to Provide Unbundled Local Switching at Total Element Long-Run Incremental Cost-Based Prices:**

11.4.1.5.2. Upon not less than one hundred eighty (180) days written notice to AT&T, Verizon may elect not to provide unbundled Local Switching (as defined in 51.319(c)(1)) at total element long-run incremental cost-based prices under the circumstances set forth herein within any portion of a territory (each, an "Exception Territory") for which Verizon can demonstrate that, as of the date on which AT&T receives notice (the "Exception Notice Date"), EELs functionality that complies in full with all of the requirements set forth in this Agreement and under Applicable Law is available for ordering and installation by AT&T throughout such territory at cost-based prices as specified in Exhibit A of this Agreement without use restrictions of any kind, and in accordance with the timeliness and quality standards set forth in Section 26 (Performance Standards, Measurements, and Penalties) of this Agreement. A territory shall be eligible to be an "Exception Territory" if it constitutes the entire service area of Verizon in density zone 1 that is located within one of the top 50 Metropolitan Statistical Areas ("MSAs") and if all of the conditions in this Schedule are satisfied throughout such territory, even if Verizon chooses to make an election pursuant to this Schedule with respect to less than the entire Exception Territory. The density zone 1 designation is as determined by NECA Tariff No. 4, as in effect on January 1, 1999. The top 50 MSAs are those listed in Appendix B of the FCC Third Report and Order and Fourth Further Notice of Proposed Rulemaking in CC Docket No. 96-98. The offices that are eligible to include Exception Territories are listed in Appendix 2 to this Part IV.

11.4.1.5.3. For the purposes of the exception, "same physical location" shall be determined by AT&T based upon the following rule:

11.4.1.5.3.(a) Pre-existing combinations and orders for unbundled 2 wire analog loops, connected to the line side port of the unbundled local circuit switching elements that were scheduled for installation before the exception is effective pursuant to the above terms shall not be disrupted or discontinued by Verizon.

11.4.1.5.3.(b) To the extent a pre-existing customer account is consolidated at the retail customer's request and such consolidation would otherwise allow the exception to be applied, Verizon shall not limit AT&T's ability to use all unbundled network elements used to provide the retail service it offered prior to the consolidation.

11.4.1.5.3.(c) Upon Verizon's compliance with the requirements above, AT&T will certify that use a mutually agreeable ordering procedure (e.g., a separate USOC) to order the unbundled local switching element where market pricing of the unbundled local switching element. Such procedures shall take effect at the later 180 days following notice by Verizon as provided in 5.1.8.1 or 180 days after Verizon and AT&T agree to the ordering procedure within the state where the unbundled local switching exception is applicable.

11.4.1.5.4 Verizon may only exercise the election permitted under this Schedule with respect to the fourth and subsequent 2 wire unbundled Loops of Verizon that AT&T uses in combination with Local Switching to provide retail local voice service to a single end user customer account name, at a single physical customer location (including a single tenant building or a single unit within a multiple dwelling unit or other multiple tenant environment). Upon request from Verizon, AT&T shall certify that the foregoing requirements do not apply to any specific facility. For the purposes of applying the exception, a "customer" shall be determined by AT&T based upon the following rule: Only two-wire analog loops unbundled loop obtained from Verizon will be counted. If such unbundled loops used by AT&T terminate at the same physical location but are billed to different retail customers of AT&T the loops will be separately accumulated for purposes of determining whether the exception may be applied. In determining whether Verizon may exercise this election in any particular case, AT&T shall not be obligated to disclose retail account detail for its customers, such as customer name or address, beyond that which is otherwise required under mutually agreeable implementation of industry standard ordering provisions.

11.4.1.5.5 Existing combinations and orders for 2 wire voice grade Loops connected to the line side port of the unbundled Local Switching elements that were installed or ordered (separately or in combination) before the date that is one hundred eighty (180) days after the Exception Notice Date (including orders placed before the end of such 180-day period and provisioned after the end of such 180-day period) shall be provided by Verizon at total element long-run incremental cost-based prices set forth in Exhibit A of this Agreement until such time as AT&T issues an order to disconnect the Network Elements, notwithstanding any consolidation of customer accounts or other modification in the servicing arrangement by AT&T. In no event shall Verizon under any circumstances disrupt or discontinue the provision of, or fail to provision, Local Switching under this Agreement.

11.4.1.5.6 In the event that AT&T orders Local Switching in excess of limitations applied by Verizon pursuant to this Schedule, Verizon's sole recourse shall be to charge AT&T a rate to be negotiated for use of the

Local Switching functionality for the affected facilities, or in the alternative to charge AT&T the Local Services Resale rate for use of all Network Elements and associated services used to provide the affected facilities to the AT&T Customer. In such cases, AT&T shall designate which facilities are being purchased at total element long-run incremental cost-based prices set forth in Exhibit A of this Agreement and which facilities are being purchased at pricing provided in this Section 4.

11.4.1.5.7 Notwithstanding the provisions set forth above, Verizon shall always provide Local Switching at total element long-run incremental cost-based prices set forth in Exhibit A of this Agreement if line side port functionality is not required. Nothing in this Schedule shall be construed to limit in any manner Verizon's obligation to provide unbundled Shared Transport at total element long-run incremental cost-based prices throughout its service area for use by AT&T in serving any AT&T customer in any quantity, including in situations where Verizon is not required to provide unbundled Local Switching at total element long-run incremental cost-based prices.

11.4.1.5.8 Nothing herein shall preclude AT&T from using its own facilities, resold services, or any other facilities, services or serving arrangements to provide additional services, in any quantity, to an end user customer account with respect to which Verizon may exercise this election.

11.4.1.5.9 All disputes arising under these provisions shall be resolved according to the Dispute Resolution process set forth in Section 28.11 of this Agreement.

11.4.1.5.10 Nothing herein shall be deemed to relieve Verizon of its obligation to provide unbundled Local Switching as a condition to meeting the requirements of Section 271(c)(2)(B)(vi) of the Act.

11.4.1.5.11 Verizon shall not impose any restrictions on AT&T regarding the use of the unbundled Local Switching it purchases from Verizon provided such use does not result in demonstrable harm to either the Verizon network or personnel.



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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of	)	
Petition of AT&T Communications	)	CC Docket No. 00-251
of Virginia, Inc., Pursuant	)	
to Section 252(e)(5) of the Communications Act,	)	
for Preemption	)	
of the Jurisdiction of the Virginia	)	
State Corporation Commission	)	
Regarding Interconnection Disputes	)	
with Verizon-Virginia, Inc.	)	

DIRECT TESTIMONY OF  
**E. CHRISTOPHER NURSE**  
ON BEHALF OF AT&T<sup>1</sup>

ISSUES ADDRESSED	
Issue I.3	Does AT&T have an obligation to provide Verizon with collocation pursuant to Section 251(c)(6) of the Telecommunications Act of 1996?
Issue III.12	Does Verizon have the obligation to make unused transmission media ( <i>i.e.</i> , spare conductors) available to AT&T and, if so, how is that obligation fulfilled?

JULY 31, 2001

<sup>1</sup> This Affidavit is presented on behalf of AT&T Communications of Virginia, Inc., TCG Virginia, Inc., ACC National Telecom Corp., MediaOne of Virginia and MediaOne Telecommunications of Virginia, Inc. (together, "AT&T").

1   **Q.   PLEASE STATE YOUR NAME, POSITION AND BUSINESS ADDRESS.**

2   A.   My name is E. Christopher Nurse. I am District Manager of Government Affairs  
3       for AT&T. My business address is 3033 Chain Bridge Road, Oakton, Virginia  
4       22185.

5   **Q.   PLEASE DESCRIBE YOUR EXPERIENCE AND QUALIFICATIONS.**

6   A.   I received a B.A. in Economics from the University of Massachusetts at Amherst.  
7       In 1996, I received a Masters in Business Administration from the Graduate  
8       School of Business at Southern New Hampshire University. Previously I held the  
9       position of Manager of Regulatory and External Affairs for AT&T Local  
10      Services. I have testified before numerous state commissions on behalf of AT&T,  
11      including a Declaration before the Federal Communications Commission in the  
12      Pennsylvania 271 proceeding.

13               Prior to joining AT&T, I was employed in the same capacity by Teleport  
14      Communications Group, Inc., beginning in February 1997.<sup>1</sup> Prior to that time, I  
15      was a telecommunications analyst with the New Hampshire Public Utilities  
16      Commission, from 1991 to February 1997. I was assigned to the Engineering  
17      Department and was entrusted with a broad range of responsibilities in  
18      telecommunications. From 1981 to 1991, I held positions of increasing  
19      responsibility in installation, maintenance and repair, construction, operations,  
20      and engineering with a number of cable television operators, including  
21      predecessors of AT&T Broadband.

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<sup>1</sup> Effective July 24, 1998, Teleport Communications Group and its subsidiaries became wholly owned subsidiaries of AT&T Corp.

1   **Q.   WHAT IS THE PURPOSE OF YOUR TESTIMONY AND WHAT ISSUES**  
2   **DO YOU ADDRESS?**

3  
4   **A.**   My testimony will show that there is no obligation for AT&T to provide  
5       collocation to Verizon in a similar manner to that which obligates Verizon to  
6       provide AT&T with collocation. This issue is identified as I.3. I will also show  
7       that AT&T's proposed interconnection agreement provisions involving access to  
8       unbundled dark fiber are reasonable, non-discriminatory and appropriate. I will  
9       demonstrate that AT&T has properly sought the type of efficient and practical  
10      access to dark fiber that will facilitate its ability to compete in the provision of  
11      local exchange service within the operating territory of Verizon in Virginia. In  
12      contrast, I will identify aspects of the Verizon contract language that impose  
13      costly and restrictive terms on such access. These issues are identified in AT&T's  
14      petition for arbitration as Issue III-12.

15  
16   

<b>ISSUE I.3   Does AT&amp;T have an obligation to provide Verizon with collocation pursuant to Section 251(c)(6) of the Telecommunications Act of 1996?</b>
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17   **Q.   DOES AT&T HAVE AN OBLIGATION TO PROVIDE VERIZON WITH**  
18   **COLLOCATION PURSUANT TO SECTION 251(C)(6) OF THE**  
19   **TELECOMMUNICATIONS ACT OF 1996?**

20   **A.**   No. AT&T, as a competitive local exchange carrier, is not obligated to offer  
21      collocation under Section 251(c)(6) of the Telecommunications Act of 1996  
22      ("Act"). Although it has no legal obligation to do so, AT&T has voluntarily  
23      entered into "space licenses" with Verizon or its affiliates at various AT&T  
24      locations. AT&T will continue to entertain requests for such licenses where  
25      adequate space is available and all when other necessary conditions are satisfied.

1   **Q.   WHAT COLLOCATION OBLIGATIONS DOES THE ACT IMPOSE ON**  
2   **INCUMBENT CARRIERS SUCH AS VERIZON?**

3   A.   Section 251(c)(6) of the Act imposes on *incumbent* local exchange carriers, such  
4       as Verizon, “the duty to provide, on rates, terms and conditions that are just,  
5       reasonable and nondiscriminatory, for physical collocation of equipment  
6       necessary for interconnection or access to unbundled network elements. . . .”

7   **Q.   DOES THE “OBLIGATION” TO COLLOCATE EXTEND TO CLECS**  
8   **SUCH AS AT&T?**

9   A.   No. *Non-incumbent* carriers, *i.e.*, competitive local exchange carriers, such as  
10       AT&T, have no obligation to provide collocation to other carriers – nor can such  
11       an obligation lawfully be imposed on CLECs.<sup>2</sup> Accordingly, Verizon cannot  
12       demand that AT&T provide collocation pursuant to Section 251(c)(6). The Act is  
13       unambiguous on this point. If Congress had intended that CLECs should be  
14       subject to collocation obligations, it simply would have included collocation  
15       obligations under § 251(b), which delineates the duties of *all* carriers (both  
16       incumbents and competitive LECs). While the Act imposes certain, but fewer,  
17       obligations on “all local exchange carrier” in § 251(b), collocation is not one of  
18       those obligations.

19   **Q.   MAY AT&T VOLUNTARILY PROVIDE SPACE TO VERIZON AT AN**  
20   **AT&T LOCATION?**

21   A.   Yes. At its own discretion, AT&T may license Verizon to locate equipment at an  
22       AT&T location and to use AT&T’s support services (*e.g.*, power, heating  
23       ventilation, air conditioning and security for the equipment) for the purpose of  
24       delivering traffic to AT&T for completion or other purposes. This type of

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<sup>2</sup>   Section 251(c) states, in part, “*Additional Obligations of Incumbent Local Exchange Carriers. . .*”



1           licensing arrangement is strictly discretionary on AT&T's part, and as such, could  
2           not be compelled or required under § 251(c)(6).

3   **Q.   HAVE AT&T AND VERIZON EVER ENTERED INTO A VOLUNTARY**  
4   **SPACE LICENSE AGREEMENT?**

5   A.   Yes, AT&T and one of Verizon's affiliates, Bell Atlantic Network Services, have  
6           entered into a space license agreement covering various AT&T locations.

7   **Q.   HAS VERIZON ACKNOWLEDGED THAT A CLEC IS NOT OBLIGATED**  
8   **UNDER THE ACT TO PROVIDE SPACE TO VERIZON?**

9   A.   Yes. The *voluntary* nature of this relationship is irrefutably illustrated through  
10          Bell Atlantic-Virginia, Inc.'s 1997 Interconnection Agreement with TCG. In this  
11          contract, which was, of course, approved by the Virginia State Corporation  
12          Commission, TCG specifically agrees to offer Verizon collocation but both  
13          parties expressly acknowledged that TCG was "not required to do so by §  
14          251(c)(6) of the Act."<sup>3</sup>

15   **Q.   IS AT&T STILL WILLING TO PROVIDE SPACE LICENSE**  
16   **AGREEMENTS TO VERIZON AT ITS VIRGINIA FACILITIES?**

17   A.   Yes. AT&T is willing to negotiate appropriate space licenses that would allow  
18          Verizon and other carriers to locate specified equipment at certain AT&T  
19          locations. The determination of whether a space license arrangement can be  
20          negotiated at a particular AT&T location, however, is wholly within AT&T's  
21          discretion, and dependent upon whether sufficient space is available and whether  
22          all other applicable conditions are satisfied.

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(Bold added). Clearly, the imperative to provide collocation only applies to ILECs.

<sup>3</sup> Interconnection Agreement Under §§ 251 and 252 of the Telecommunications Act of 1996 by and between Bell Atlantic-Virginia, Inc. and TCG Virginia, Inc., dated February 3, 1997, approved May 30, 1997, § 13.2.

1

**ISSUE III.12 Does Verizon have the obligation to make unused transmission media (i.e., spare conductors) available to AT&T and, if so, how is that obligation fulfilled?**

2

3 **Q. WOULD YOU PLEASE SUMMARIZE AT&T'S POSITION**  
4 **CONCERNING ACCESS TO VERIZON'S DARK FIBER?**

5

6 **A.** Verizon is obligated to make unused transmission media, such as dark fiber cable,  
7 available to AT&T in the same manner as it is able to utilize such fiber itself, on  
8 nondiscriminatory terms and conditions, at technically feasible points—including  
9 at the regenerator or optical amplifier equipment and at splice points. Access  
10 should not be limited, as Verizon maintains, only to hard termination points.  
11 CLECs should be able to have access to and reserve use of available dark fiber  
12 consistent with reasonable business practices. Verizon should be required to  
13 provide AT&T with dark fiber that conforms to industry standards for  
14 transmission quality, just as it does with UNE loops, and for similar reasoning.

15 **Q. HOW DOES VERIZON PROPOSE TO MEET THAT OBLIGATION?**

16 **A.** Verizon proposes to meet its obligation by imposing restrictive limitations on the  
17 types of fiber to which it is willing to provide access and by limiting even that  
18 access to only certain points.

19 **Q. DOES VERIZON'S OBLIGATION APPLY TO ONLY A PARTICULAR**  
20 **TYPE OR TECHNOLOGY OF TRANSMISSION CONDUCTOR (E.G.,**  
21 **FIBER)?**

22

23 **A.** No. The UNE Remand Order does not limit an ILEC's unbundling obligation to  
24 only a particular transmission conductor type/technology. In fact, the FCC has

1 made it abundantly clear that CLECs are entitled to obtain facilities in any manner  
2 in which it is technically feasible and provide these efficiencies to the market. In  
3 contrast, Verizon's definition is designed to avoid its obligation to provide, as a  
4 transport UNE, any unused transmission medium that is installed. The  
5 Commission specifically found that the distinct aspect of dark fiber that qualifies  
6 it as a UNE is that it is "unused transport capacity"<sup>4</sup> and as such, it is "similar to  
7 the unused capacity of other network elements."<sup>5</sup>

8 Fiber is not the only type of "unused transport capacity" that is used in the  
9 provision of a telecommunications service, and the fact that the Commission did  
10 not expressly mention other types of unused transmission media, such as, for  
11 example, coaxial cable does not affect their status as unused capacity.<sup>6</sup> The  
12 transmission medium is not the governing factor. The relevant standard that the  
13 Act itself sets, as identified by the Commission and confirmed by the US Supreme  
14 Court, is whether Verizon has "unused transport capacity". If so, this capacity is  
15 defined as being part of the Local Transport UNE. To the extent, then, that  
16 Verizon has deployed fiber, coaxial cable or other transmission media in its  
17 network for purposes of providing "transport capacity," it should appropriately be  
18 included in the interconnection agreement.

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<sup>4</sup> UNE Remand Order at ¶ 326.

<sup>5</sup> *Id.* at 325.

<sup>6</sup> Indeed, the Commission implicitly acknowledged that it could not enumerate all such methods of transport, when it modified its transport rules to "clarify that incumbent LEC[s] must unbundled DS1 through OC192 dedicated transport offerings *and such higher capacities as evolve over time...to ensure that the definition ... will apply to new, as well as current technologies.* *Id.* at ¶ 323.

1   **Q.   SHOULD VERIZON BE PERMITTED TO RESERVE CAPACITY FOR**  
2   **ITS OWN USE WHILE AT THE SAME TIME DENYING AT&T ACCESS**  
3   **TO CAPACITY BETWEEN THE SAME POINTS?**

4   A.   No. Verizon maintains that it does not reserve fiber for itself, but admits in the  
5       same breath that it dedicates some fibers as maintenance spares and reserves  
6       others for near-term customer service requirements, *and for future growth*.<sup>7</sup>  
7       Those fibers, it declares, are off-limits to CLECs. This is patently discriminatory;  
8       Verizon reserves dark fiber for its future growth, but Verizon prohibits CLECs  
9       from doing precisely the same thing. Non-discrimination mandates that Verizon  
10      afford CLECs the same or equivalent opportunities to reserve fiber for  
11      maintenance spares, near-term customer service requirements, and for future  
12      growth.

13               The UNE Remand Order makes it clear that the technological ability to  
14      readily increase the capacity of dark fiber should eliminate any need for ILECs to  
15      reserve capacity to themselves. In dismissing ILEC claims that their inability to  
16      reserve unused transmission media would jeopardize their obligations as carrier of  
17      last resort, the Commission stated:

18               We note here ... that GTE [Verizon] raises concerns that  
19      incumbents, because of their carrier-of-last-resort obligations, have  
20      a special need for fiber reserves. As we explain in greater detail

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<sup>7</sup> Paragraph 11.2.11.3 of Verizon's suggested interconnection agreement language states that "Verizon may reserve dark fiber loops and dark fiber IOF for maintenance purposes, to satisfy customer orders for fiber related services, or for future growth." In the Massachusetts DTE Order on Pricing and Terms and Conditions for Dark Fiber (Docket 96-80/81), the Department agreed with AT&T that the three-year planning forecast (allocated for future growth) would give Verizon unreasonable discretion to limit the availability of dark fiber to CLECs. Therefore, it ordered that unless Verizon has received a specific order for fiber related service from a given customer, it may not reserve the use of a fiber strand for that customer and thereby limit its availability to CLECs. *Id.* at 20; *see also*, Verizon Answer and Response to Issues, filed May 31, 2001, at 106.

1 below, we find these concerns exaggerated, because the capacity of  
2 fiber can be increased many fold simply by increasing the power of  
3 the [Dense Wave Division Multiplexing] electronics that light it.  
4 *We find, therefore, that a shortage of fiber capacity caused by*  
5 *unbundling is highly unlikely.* In addition, GTE [Verizon] and the  
6 Telecommunications Industry Association argue that requiring  
7 incumbent LECs to unbundle fiber will reduce their incentive to  
8 build fiber loops in the first place. We remain skeptical that this is  
9 the case, because incumbents face loop unbundling obligations no  
10 matter which technology they deploy.<sup>8</sup>

11 **Q. IF THE COMMISSION DECIDES THAT VERIZON MAY DENY**  
12 **REQUESTS FOR UNUSED TRANSMISSION MEDIA, SHOULD THE**  
13 **COMMISSION MAKE IT CLEAR THAT VERIZON MAY NOT REFUSE**  
14 **A REQUEST IF IT IS TECHNICALLY FEASIBLE TO UPGRADE THE**  
15 **ELECTRONICS?**

16 **A.** Yes. If the only thing stopping Verizon from providing the unused transmission  
17 media to AT&T is the electronics, Verizon should be required to upgrade the  
18 electronics and render the unused transmission media usable for AT&T.  
19 Certainly, if Verizon needed that transmission media, Verizon would upgrade the  
20 electronics for itself. As a result, Verizon should be required to do so for AT&T  
21 as well. If the Commission permits Verizon to deny AT&T's requests for unused  
22 transmission media, the Commission should make it clear that Verizon may not  
23 refuse a request if it is technically feasible to upgrade the electronics and, thus,  
24 render the unused transmission media available.

25 **Q. SHOULD VERIZON BE REQUIRED TO ADD SUFFICIENT UNUSED**  
26 **TRANSMISSION MEDIA TO MEET THE PROJECTED**  
27 **REQUIREMENTS OF AT&T WHEN VERIZON INSTALLS NEW**  
28 **TRANSMISSION FOR ITSELF?**

29 **A.** Yes. From time to time, in building its network, Verizon installs transmission  
30 media for future uses and/or for administrative uses. Because Verizon builds to

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<sup>8</sup> UNE Remand Order at ¶¶ 198-99.

1 meet its own forecasted needs for unused transmission media, Verizon should be  
2 required to do the same for AT&T. When Verizon installs such new transmission  
3 media or adds to existing transmission media, Verizon must add sufficient unused  
4 transmission media to meet the projected requirements of AT&T. AT&T will  
5 provide reasonable and timely forecasts to enable Verizon to install the amount of  
6 media needed.

7 **Q. SHOULD VERIZON BE PERMITTED TO LIMIT ACCESS TO UNUSED**  
8 **TRANSMISSION MEDIA, (SUCH AS DARK FIBER), TO HARD**  
9 **TERMINATION POINTS?**

10 A. No. Verizon contends that it is technically infeasible to provide access anywhere  
11 other than at such points. But again, even as it does, it acknowledges that it is  
12 technically feasible to obtain access at regenerator or amplifier equipment.<sup>9</sup> It  
13 makes the same inconsistent argument about access at splice points,<sup>10</sup> which it  
14 contends, on one hand are a technically infeasible point of interconnection and, on  
15 the other, are, if AT&T seeks such access there, really subloops. There is no basis  
16 for Verizon's restrictions, and AT&T should, consistent with the Act and the  
17 UNE Remand Order, be permitted access to dark fiber at any technically feasible  
18 point, as its proposed contract terms provide.

19 Moreover, even if, as Verizon apparently prefers, access to dark fiber  
20 loops at splice points is really more appropriately referred to as a method of  
21 subloop unbundling, AT&T is still entitled to that form of access. Thus, the

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<sup>9</sup> Verizon Answer and Response to Issues, filed May 31, 2001, at 108.

<sup>10</sup> *Id.* at 109.

1 semantic gamesmanship that Verizon engages in is not only unfounded, it does  
2 not support its position. Verizon's arguments in seeking to prevent AT&T from  
3 rightfully availing itself of dark fiber ultimately fail to provide sufficient reason  
4 for such denial of facilities.

5 **Q. WHAT OTHER ASPECTS OF VERIZON'S PROPOSAL ARE**  
6 **PROBLEMATIC?**

7 A. Verizon proposes to define the dark fiber that it will make available to CLECs in  
8 a manner that severely—and discriminatorily—limits its obligation. Specifically,  
9 Verizon maintains that the only unused loop or transport facilities that it will  
10 make available must be two continuous fiber optic strands located within a  
11 Verizon fiber optic cable sheath. Verizon maintains that fiber that is not  
12 continuous, or that must be spliced together, is not connected to Verizon's  
13 facilities and thus does not qualify as a UNE. Adding insult to this injury, it also  
14 maintains that while it can splice such fiber for itself, it not only has no obligation  
15 to do so for AT&T, it also will not permit AT&T, or qualified vendors, third party  
16 vendors, etc., to do so on its own behalf, for fear that that would "jeopardize  
17 service to thousands of "live" customers."

18 None of Verizon's contorted arguments have merit. Verizon does not  
19 explain – because it cannot – why Verizon should be entitled to access a fiber  
20 strand from Point A to Point B and another from Point B to Point C, and by  
21 splicing them together thus reach from A to C, while denying AT&T and other  
22 CLECs the same reasonable opportunity. Under Verizon's view, unless a  
23 particular uninterrupted strand of fiber matched precisely the route that AT&T

1 needed, Verizon would not need to provide it. Nor could AT&T obtain two  
2 contiguous, but discontinuous, strands and splice them together. This  
3 discrimination further establishes a perverse incentive for Verizon to *not* splice  
4 together fiber spans that it would otherwise have splice together during  
5 construction. For under Verizon's contorted view keeping the two strands  
6 unspliced somehow keeps them beyond a CLEC's reach.

7           Additionally, I object to Verizon's requirement that its obligation be  
8 limited to fibers within a fiber optic cable sheath that it owns. The Commission  
9 did not see fit to make sheath ownership a part of the definition of dark fiber.  
10 Moreover, Verizon easily could manipulate the title to sheath of the fiber optic  
11 cable to discriminate against CLECs. It is foreseeable that Verizon could transfer  
12 ownership of the fiber optic sheath to an affiliate (established pursuant to 47  
13 U.S.C. § 272) in order to reserve to the affiliate large amounts of dark fiber and  
14 thereby avoid its dark fiber obligations. The issue of sheath ownership is simply a  
15 vehicle by which Verizon seeks to avoid providing CLECs with non-  
16 discriminatory access to dark fiber and it should not be included in the contract.

17 **Q. HAS AT&T PROPOSED A REASONABLE PROCESS TO OBTAIN**  
18 **ACCESS TO DARK FIBER?**

19 **A.** Yes. AT&T has proposed that it be provided reasonable access to Verizon's pole  
20 and conduit maps, records, or other records, including databases, that would  
21 contain the necessary dark fiber information, or that, within specific time periods  
22 for responses, AT&T could submit an inquiry to Verizon. The inquiry would set  
23 forth the end points where dark fiber is requested and would be required to be



1 responded to in a reasonable time frame, depending on the review necessary. The  
2 response would set forth the availability of dark fiber across the designated route  
3 and not simply the availability (or lack thereof) from point A to point B, (e.g. if  
4 fiber is available from A to within 100 feet of point B, that information should be  
5 conveyed to the CLEC as it would be to Verizon).

6 CLECs however, should not be saddled with a cumbersome process.  
7 Verizon should be obligated to provide us with either access to the same back end  
8 system, or access to an interface with the same information that Verizon provides  
9 to itself, (irrespective of whether the process is manual or electronic). For  
10 example, a CLEC may request dark fiber on a ring from a point at 12 o'clock to a  
11 point 9 o'clock and receive a negative response from Verizon that dark fiber is not  
12 available for that route. However, it might be the case that dark fiber is available  
13 from points 12 o'clock to 3 o'clock to 6 o'clock to 9 o'clock. Such preorder  
14 information on alternate routes or configurations should be available on a non-  
15 discriminatory basis.

16 **Q. SHOULD VERIZON BE PERMITTED TO REQUIRE BURDENSOME**  
17 **FIELD SURVEYS FOR AT&T TO OBTAIN ACCESS TO DARK FIBER?**

18 **A.** No. Verizon should not be permitted to require burdensome field surveys with no  
19 guarantee of facilities availability or quality.<sup>11</sup> Verizon certainly has records of its  
20 fiber plant locations. It should be required to share those records with AT&T

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<sup>11</sup> Verizon maintains in its Answer (p. 111) that field surveys are not required to obtain access to dark fiber and that they are "merely a recommended option." However, Verizon does not explain how AT&T will obtain access to unused transmission media without a field survey. The Commission should insure that the process is documented and affirmatively does not require burdensome field surveys.

1 such that AT&T could determine the location of unused transmission media and  
2 obtain access without the need for a burdensome field survey. If, instead, AT&T  
3 is required to perform a field survey every time it wants to request unused  
4 transmission media, AT&T would be needlessly duplicating work already  
5 represented by Verizon's existing records.<sup>12</sup> Moreover, such a requirement would  
6 be inconsistent with the Act's obligation of non-discriminatory access and  
7 inconsistent with the FCC's determinations in the UNE Remand Order.

8 **Q. IS VERIZON'S REQUIREMENT, THAT AT LEAST ONE END OF A**  
9 **DARK FIBER SPAN MUST BE LOCATED AT A COLLOCATION CAGE,**  
10 **REASONABLE?**

11 A. No. The requirement of a collocation arrangement at a minimum of one end of  
12 the dark fiber is technically unnecessary and is otherwise unreasonable. It would  
13 competition from a practical point of view by imposing an unnecessary cost and  
14 delay on AT&T where AT&T has no other reason for a collocation arrangement.  
15 Such a requirement is anti-competitive because it forces CLECs unnecessarily to  
16 use valuable and limited collocation space in the central office that may foreclose  
17 an opportunity for another CLEC that actually needs the collocation space to  
18 operate. Moreover, Verizon already has recognized there is no need for such  
19 mandatory collocation as evidenced by its implementation of "virtual  
20 collocation", (by which Verizon splices a CLEC fiber cable to a Verizon fiber  
21 cable in the central office vault, central office manhole, or other nearby mid-span  
22 meet, to create fiber continuity into the central office without requiring a

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<sup>12</sup> AT&T understands that, if it does not perform a field survey and relies solely on Verizon's fiber plant records, AT&T assumes the risk that unused transmission media shown on the records may not actually exist or may not actually be unused.

1 collocation cage in the central office). AT&T should be permitted to access  
2 unused transmission media at splice points.

3 Verizon asserted a substantially similar position about dark fiber  
4 termination in a collocation arrangement in a proceeding before the Massachusetts  
5 Department of Telecommunications and Energy. Its justification was that the  
6 collocation requirement was critical to Verizon's ability to repair and restore  
7 damaged fiber optic facilities within its network. The Massachusetts DTE  
8 disagreed, siding with AT&T, which asserted that there was no technical  
9 justification given the feasibility of connecting at existing splice points.<sup>13</sup>

10 **Q. SHOULD VERIZON BE REQUIRED TO COMMIT TO REASONABLE**  
11 **INTERVALS FOR THE COMPLETION OF REQUESTED SURVEYS**  
12 **AND TO THE TURN-UP OF FIBER?**

13 **A.** Yes. Verizon should be required to commit to reasonable intervals for the  
14 completion of surveys and turn-up of fiber, even if it receives more than 10  
15 survey requests per LATA within a month. While it is reasonable to expect that  
16 Verizon should be afforded some provisioning flexibility in the face of multiple  
17 requests for access to dark fiber, it is unreasonable for it to seek to avoid any  
18 commitments at all—in advance—whenever as few as 10 requests within a LATA  
19 are filed in any one month.

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<sup>13</sup> See Order, *Consolidated Petitions of New England Telephone and Telegraph Company d/b/a Bell Atlantic-Massachusetts, Teleport Communications Group, Inc., Brooks Fiber Communications of Massachusetts, Inc., AT&T Communications of New England, Inc., MCI Telecommunications Company, and Sprint Communications Company, L.P., pursuant to Section 252(b) of the Telecommunications Act of 1996, for arbitration of interconnection agreements between Bell Atlantic-Massachusetts and the aforementioned companies*, Massachusetts Department of Telecommunications and Energy, Case No. 96-73/74, 96-75, 96-80/81, 96-83, 96-94-Phase 4-N, December 13, 1999.

1                   Moreover, Verizon should not be allowed to require a 30-day interval to  
2                   turn up dark fiber once ordered by a CLEC. Once all necessary predicates for  
3                   access to a fiber sheath are accomplished, imposing another 30-day period to turn  
4                   up the requested fiber is unnecessary. Recognizing that there may be a few  
5                   additional steps to be taken, AT&T would not object to a more reasonable interval  
6                   (such as 20 days).

7   **Q.   DOES THIS COMPLETE YOUR TESTIMONY?**

8   **A.   Yes.**